

## CHAPTER 68 FOOD LICENSE REGULATIONS

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**68-01. Adoption of State Code.** Except as otherwise provided in this chapter, the city of Milwaukee adopts chs. 97 and 98, Wis. Stats., chs. ATCP 75, 80, 88 and HFS 196, Wis. Adm. Code, as amended, and where pertaining specifically to food operation premises, Comm 14, 16, and 61 to 65 Wis. Adm. Code, as amended, as part of this code.

**68-02. Adoption of Municipal Code.** Except as otherwise provided in this chapter, the city of Milwaukee adopts, for enforcement by the commissioner of health, ch. 214 where pertaining specifically to fire prevention in food operation premises.

**68-03. Enforcement. 1. REGULATIONS.** The commissioner of health or the commissioner's duly authorized representative shall enforce the regulations of this chapter and may issue orders to effect corrections of violations and may issue citations pursuant to the procedure set forth in s. 50-25, except orders to correct violations of ch. 214 shall be enforced as specified in ch. 200.

**2. ANNUAL REPORT REQUIRED.** The commissioner of health shall by March 1 submit annually to the common council and the mayor a written restaurant compliance report on restaurant sanitary conditions. The report shall include the following information:

a-1. Summary of the extent of critical risk Wisconsin food code violations reported citywide, by inspection district and by type of establishment.

a-2. Comparison and analysis of inspection results over time to determine the extent of progress being made to reduce and eliminate the critical restaurant violations that can lead to food-borne illness.

**68-04. Inspection and Reinspection.** As a condition of license renewal, all establishments licensed under this chapter shall submit to an annual inspection and reinspection. License renewal may be withheld pending inspection, reinspection and compliance with these regulations.

**68-1. Definition.** The term "food" as used in this chapter shall include all articles of food, drink or condiment, including ice and water used for human consumption, whether simple, mixed, or compound, and articles used or intended for use as ingredients in the composition or preparation thereof.

**68-2. Sanitary Regulations.** No person shall manufacture, prepare for sale, offer, expose for sale or sell food defined in s. 68-1 unless it is securely protected from filth, flies, dust or contamination or unclean, unhealthful or insanitary conditions.

**68-3. Impure Food, Drugs, Water or Ice.** It shall be unlawful for any person, firm, company or corporation, or any agent or employee thereof, to keep for sale, offer for sale, or exchange or sell or deliver or expose for sale any food or drugs not conforming to the rules and standards adopted pursuant to s. 68-01, and any water, liquids, ice or human food which shall be impure, unwholesome, adulterated, or to which any harmful or injurious foreign substance has been added.

**68-4. Food Dealer License. 1. REQUIRED.**

a. No person, partnership, association or corporation may establish a food operation, manufacture, offer for sale, store, distribute or sell food within the city without first having obtained a food dealer's license or license with

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conditions allowing temporary operation of a food establishment. The license shall be required of all persons selling or distributing food, with the exception that such a license shall not be required of persons holding a food peddler's permit or meal service permit issued by the commissioner of health.

b. Only those persons, associations or corporations in compliance with the applicable requirements of this section shall be eligible to receive and retain a food dealer license.

c. Food dealer licenses shall not be transferable from person to person or from premises to premises.

d. The commissioner or an authorized agent may grant a license with conditions for the temporary operation of a food establishment prior to the completion of orders and the issuance of a regular food dealer license, provided that the business is in substantial compliance with this section and the operation of the food establishment will not jeopardize the life, health and safety of the public and property, and the department of city development has approved an occupancy permit. The issuance of a license with conditions shall be revoked after 30 days and the operation shall cease unless all conditions are met and a regular license issued. The regular license application shall be granted or denied before the license with conditions expires. The issuance of a license with conditions shall not apply to renewals.

e. No person may sell food door-to-door except for occasional sales by representatives of a religious, fraternal, youth, civic or patriotic organization, service club or church. In this paragraph, "occasional sales" means that food is offered for sale on not more than 3 days in any 12-month period.

**1.5. LICENSE NOT REQUIRED.** A food dealer license shall not be required for the following:

a. A person selling only bottled or canned water or bottled or canned soda and no other food items.

b. A religious, fraternal, youth, civic or patriotic organization, service club or religious assembly that sells food only one day during a fiscal year.

**2. APPLICATION.** Applications for a food dealer's license shall be made in writing to the health department on forms provided by the health department and shall contain the following information:

a. The name, address and date of birth of the applicant.

b. The trade name and address of the food service establishment.

c. Whether the applicant is a person, corporation or partnership.

c-1. If the applicant is a corporation, the application shall contain the registered agent's name, address and date of birth, and verification that the corporation has been registered with the secretary of state as provided in ch. 180, Wis. Stats.

c-2. If the applicant is a partnership, the application shall include the names and addresses of the partners.

d. The signature of all applicants and their agents to confirm that all information on the application is correct and acknowledge that any change in the information on the application shall be reported to the commissioner within 14 days of the change.

**3. PROCEDURE FOR ISSUING NEW OR RENEWAL LICENSE.** a. The commissioner shall issue a license to each applicant for a new or renewal license who meets all the requirements of this section and has paid to the city treasurer the fee required in s. 60-21 unless there is an objection by the commissioner, the department of neighborhood services, the common council member in whose district the food establishment is located, or any neighbor or other interested person. If there is an objection to the issuance or renewal of a license, the procedure for considering the license application shall be as specified in sub. 10.

b. The late renewal fee for licenses issued under ss. 60-21 to 60-31 may not be waived unless definite proof exists that the delay is the fault of the department.

**4. POSTING.** Each licensee shall post his or her license in a conspicuous place on the food establishment premises.

**5. CHANGES TO BE REPORTED.** a. A licensee shall notify the commissioner whenever there is a change in any information that is reported in the application form or renewal application form. The licensee shall make this notification in writing within 5 days after the change occurs.

b. The owner of any premises for which a license has been granted shall promptly notify the department in writing of his or her intention to cease operations.

c. An individual applicant or licensee who resides outside Wisconsin or who leaves the state for an extended period of time shall provide the commissioner or the commissioner's authorized agent with the name, address and telephone number of a responsible person or agent within the state of Wisconsin upon whom any process, notice or demand required or permitted under this section to be served upon the licensee may be served. Violation of this subsection may result in suspension or revocation of the license.

**6. INSPECTION BY HEALTH DEPARTMENT.** Authorized employees of the health department, upon presenting proper identification, shall be permitted to enter any food establishment at any reasonable time for the purpose of inspecting to determine compliance with city and state health regulations. The representative shall be permitted to examine the records of the food establishment to obtain information about gross annual food sales for restaurant and retail stores, food and supplies purchased, received or used.

**7. SUSPENSION FOR NONRENEWAL.** The commissioner shall notify the appropriate city officials and order the immediate enforcement of this section in cases involving failure to renew a food dealer's license. Such a licensee shall be prohibited from manufacturing, offering for sale, distributing or selling food until a valid license has been applied for and obtained under this section.

**8. INSUFFICIENCY OF FUNDS; NON-PAYMENT OF FEES.** a. If payment for a license fee is made by check or other draft drawn upon an account containing insufficient funds, the applicant shall, within 15 days after receipt of notice from the department of the insufficiency, pay by cashier's check or other certified draft, money order or cash, the fees, late fees and processing charges as specified by city code. Nonpayment of all applicable fees, late fees and processing charges within 15 days after the applicant received notice of the insufficiency shall deem the license null and void. The establishment shall close until a new application is made, a new license obtained, and the applicable fees are paid.

b. Any individual or corporation that owes the city for unpaid fines, late fees, or license fees relating to a current or previous food operation shall pay all such outstanding fees before a license is issued.

**9. OBSTRUCTION OF HEALTH DEPARTMENT EMPLOYEES.** No person may assault, restrain, threaten, intimidate, impede, interfere with or otherwise obstruct the commissioner or an authorized agent in the performance of his or her duties under this section, nor shall the operator give false information with the intent to mislead the commissioner or authorized agent. Violation of this subsection may result in revocation of a license.

**10. PROCEDURE FOR DENIAL OR NONRENEWAL OF LICENSE.** a. If there is an objection to an application for a new or renewal license, the commissioner shall so notify the city clerk. The utilities and licenses committee shall hold a hearing on whether to issue the license. Causes for denial or nonrenewal of an application or license shall be those specified in sub. 11.

b. The city clerk shall give each applicant at least 3 working days notice of the date and time of the hearing and of the specific charges upon which the hearing will be conducted. The applicant shall have an opportunity to appear at the hearing, be represented by counsel, cross-examine witnesses who oppose the renewal of the license and present evidence in favor of issuance or renewal of the license.

c. At the conclusion of the hearing, the committee shall make a recommendation to the common council concerning issuance of a new or renewal license. The committee shall provide a written report of its findings and recommendations to the city attorney, the commissioner, the licensee or applicant and each member of the common council.

d. Where it is impractical for the utilities and licenses committee to hold an evidentiary hearing, the committee may employ a hearing officer for the purposes of taking testimony and rendering recommended findings of fact and conclusions of law to the committee. When such hearing officer is employed, he or she shall prepare written findings of fact and conclusions of law which shall be simultaneously transmitted to the utilities and licenses committee as well as the licensee, the licensee's agent, manager, operator or any other employee of the licensee and to the person bringing the complaint or objection. The chair of the utilities and licenses committee shall schedule a hearing on the receipt of the report of the hearing officer in

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not more than 30 days from receipt of the report of the hearing officer. Notice of the utilities and licenses committee hearing on the report shall be given to all parties. The utilities and licenses committee may take and reserve additional evidence at the time of said hearing. The utilities and licenses committee may accept or reject the report of the hearing officer and make any changes to the report which are warranted by the circumstances, the evidence presented and any arguments of the parties who appeared before the hearing officer and the committee. The utilities and licenses committee shall transmit its recommendation to the full common council for action.

e. Whenever the utilities and licenses committee recommends nonrenewal of an existing license, the applicant shall be given no less than 5 days notice of the date set for hearing by the common council.

f. At the meeting of the common council, the chair shall allow oral argument by an applicant who, at least 2 days prior to the date of the meeting, has presented written objections to the recommendations of the utilities and licenses committee. The city attorney shall also be permitted to make a statement. Oral arguments shall be limited to 5 minutes on behalf of each party.

g. A roll call vote of the common council shall be taken as to whether the recommendation of the committee shall be accepted. The applicant shall be provided with written notice of the results of the common council vote.

h. All objections to renewal of a license shall be heard and acted upon by the common council at least 60 days before expiration of the license.

**11. CAUSES FOR COUNCIL DENIAL, REVOCATION OR SUSPENSION OF LICENSE.**  
An application for a new or renewal food dealer's license may be denied, or any license issued under this section may be suspended or revoked, by the common council for any of the following causes:

a. Failure of the applicant or licensee to meet the statutory and municipal license qualifications, except for failure to meet sanitary or other health-related qualifications or other circumstances described in s. 68-6 as grounds for license revocation or suspension by the commissioner of health.

b. A false or materially incorrect statement made by the applicant in his or her application.

c. Violation of any provision of this section by the applicant, licensee or any employee of the food establishment.

d. The conviction of the applicant or licensee, his or her agent, manager, operator or any other employee for sale or possession with intent to sell any controlled substance or for any felony related to the licensed operation which, in the judgment of the common council, is pertinent to the license being applied for or renewed.

e. A showing that the applicant or licensee has violated any state law or city ordinance prohibiting the sale of tobacco products to underage persons.

f. The violation of any of the excise laws of the state.

g. A showing that the licensed premises has been the source of congregations of persons which have resulted in one or more of the following:

- g-1. Disturbance of the peace.
- g-2. Illegal drug activity.
- g-3. Public drunkenness.
- g-4. Drinking in public.
- g-5. Harassment of passers-by.
- g-6. Gambling.
- g-7. Prostitution.
- g-8. Sale of stolen goods.
- g-9. Public urination.
- g-10. Theft.
- g-11. Assaults.
- g-12. Battery.
- g-13. Acts of vandalism, including graffiti.
- g-14. Excessive littering.
- g-15. Loitering.
- g-16. Illegal parking.
- g-17. Loud noise at times when the licensed operation is open for business.
- g-18. Traffic violations.
- g-19. Curfew violations.
- g-20. Lewd conduct.
- g-21. Display of materials harmful to minors, pursuant to s. 106-9.6.

### **12. DISQUALIFICATION FOR LICENSE.**

a. Whenever any licensee is denied renewal by the common council, it shall be so entered on the record by the commissioner and no other food dealer's license shall be so granted to such person for that location within 12 months of the date of nonrenewal.

b. When any license is surrendered in lieu of pending nonrenewal proceedings, no other food dealer's license shall be granted to such person within 12 months of the date of its surrender.

**13. PROCEEDINGS TO SUSPEND OR REVOKE LICENSE FOR REASONS RELATING TO UNSANITARY CONDITIONS.** Proceedings to suspend or revoke a food dealer's license for reasons relating to unsanitary or other health-related conditions or for serious or repeated violations of any of the requirements of this chapter shall be conducted in accordance with the provisions of s. 68-6.

**14. COMMENCEMENT OF PROCEEDINGS TO SUSPEND OR REVOKE LICENSE FOR REASONS NOT RELATING TO UNSANITARY CONDITIONS.** Proceedings to suspend or revoke a food dealer's license for reasons other than the grounds for suspension or revocation described in s. 68-6 may be initiated by the utilities and licenses committee of the common council upon its own motion, upon sworn written charges made and filed with the commissioner by the chief of police or upon a sworn written complaint filed with the commissioner by any city resident.

**15. PROCEDURE FOR REVOCATION OR SUSPENSION.** a. Notice. Whenever either sworn written charges or a sworn written complaint are filed with the commissioner setting forth specific charges against a licensee relating to any of the causes for revocation or suspension of a license set forth in sub. 11, the city clerk shall issue notice to the licensee of the licensing committee's intention to hear the matter. The notice shall be served upon the licensee so that the licensee has at least 10 working days' notice of the hearing. The notice shall contain:

a-1. The date, time and place of the hearing.

a-2. A statement to the effect that the possibility of suspension or revocation of the license exists and the reasons for possible suspension or revocation.

a-3. A statement that an opportunity will be given to the applicant to respond to and challenge any reason for suspension or revocation and to present witnesses under oath and to confront and cross-examine opposing witnesses under oath.

a-4. A statement that the licensee may be represented by an attorney of the licensee's choice at the licensee's expense, if the licensee so wishes.

b. Committee Hearing. b-1. The licensing committee shall convene at the date and time designated in the notice for the purpose of taking evidence and making findings of fact and conclusions of law and a recommendation to the common council in connection with the proposed revocation or suspension.

b-2. If the licensee appears before the committee at the time designated in the notice and denies the charges contained in the complaint, an evidentiary hearing in connection with the revocation or suspension shall be conducted by the committee at that time. If the licensee does not appear, or appears but does not deny the charges contained in the complaint, the complaint shall be taken as true and the committee shall hear the arguments of the city attorney and the licensee in connection with the revocation or suspension.

b-3. At any evidentiary hearing required by this subsection, the city attorney shall first present evidence in support of the complaint. After the city attorney rests, the licensee shall present evidence in opposition to the complaint. Each may subpoena witnesses. All witnesses shall testify under oath and shall be subject to cross-examination under oath. At the close of the testimony, each shall be given a reasonable time to make arguments upon the evidence adduced at the hearing.

b-4. The chair of the utilities and licenses committee shall be the presiding officer. The chair shall direct that oaths be administered and subpoenas issued upon request of either side. The chair shall ensure that an orderly hearing is conducted in accordance with the requirements of this subsection. The chair shall rule on objections to the admissibility of evidence. Any ruling of the chair shall be final unless appealed to the committee, and the committee shall reverse such ruling only upon the vote of a majority of its members.

b-5. At all stages of the proceedings before the committee or before the common council, the licensee shall be entitled to appear both in person and by an attorney.

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b-6. A stenographic record shall be made of all proceedings before the committee and before the common council when written exceptions have been filed. Any interested party may at any stage of the proceedings order a copy of the transcript of the record or portions thereof at his or her own expense.

c. Hearing Officer. Where it is impractical for the utilities and licenses committee to hold an evidentiary hearing, the committee may employ a hearing officer for the purposes of taking testimony and rendering recommended findings of fact and conclusions of law to the committee. When such hearing officer is employed, he or she shall prepare written findings of fact and conclusions of law which shall be simultaneously transmitted to the utilities and licenses committee as well as the licensee, the licensee's agent, manager, operator or any other employee of the licensee and to the person bringing the complaint or charges. The chair of the utilities and licenses committee shall schedule a hearing on the receipt of the report of the hearing officer in not more than 30 days from receipt of the report of the hearing officer. Notice of the utilities and licenses committee hearing on the report shall be given to all parties. The utilities and licenses committee may take and reserve additional evidence at the time of said hearing. The utilities and licenses committee may accept or reject the report of the hearing officer and make any changes to the report which are warranted by the circumstances, the evidence presented and any arguments of the parties who appeared before the hearing officer and the committee. The utilities and licenses committee shall transmit its recommendation to the full common council for action.

d. Committee Report. d-1. Within 10 working days after it reaches a decision, the committee shall prepare and serve a report and recommendation on the proposed license revocation or suspension and transmit copies thereof to the city attorney, the commissioner, the licensee and each member of the common council. The report and recommendations shall include specific findings of fact and conclusions of law made by the committee.

d-2. If the committee recommends that the license be revoked or suspended, then within 7 days of the receipt of the report and recommendation of the committee, the licensee shall file written exceptions, if any, to the report and recommendations of the committee.

d-3. Any exceptions filed by the licensee to the report and recommendations of the committee shall be provided to each member of the common council at least 24 hours before any vote on the question is scheduled before the common council.

e. Council Action. e-1. At a meeting of the common council following the receipt of the report and recommendations of the committee, the common council shall consider the report and recommendation. Not less than 5 days prior to the hearing before the common council, the city clerk shall notify the licensee by certified mail and also notify the city attorney that the common council will convene. If written exceptions are filed, the hearing shall be at the time set for such proceedings by the council's rules. Each member of the common council shall be asked to affirm that he or she has read the report and recommendation of the committee. When written exceptions are filed to a committee report and recommendation that the license be suspended or revoked, each member of the common council shall be asked to affirm that he or she has read the exceptions. If members of the council have not read the recommendation and report of the committee and any exceptions that have been filed thereto, the chair shall allocate time for the members to do so. Oral argument in support of the report and recommendation presented by the city attorney and oral argument on behalf of the licensee in opposition to the report and recommendation shall be permitted only at the discretion of the chair. If such argument is permitted by the chair, each side shall be limited to 5 minutes and the arguments shall be limited to the subject matter of the report and recommendation and the written exceptions.

e-2. The common council shall determine by a majority vote of those in attendance and voting whether to adopt the recommendation of the committee. Such vote shall be a roll call vote. If the common council finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation with the committee's report and recommendation and in accordance with this section, the commissioner shall give notice of each suspension or revocation to the person whose license is suspended or revoked. If the common council finds the complaint to be untrue, the

proceedings shall be dismissed without cost to the accused. If the common council finds the complaint to be malicious and without probable cause, the cost shall be paid by the complainant upon invoice from the city.

f. **Effective Date of Suspension or Revocation.** All suspensions and revocations shall be effective upon service of notice of the suspension or revocation upon the licensee or person in charge of the food establishment at the time of service.

**16. REQUEST TO SURRENDER A LICENSE.** In the event that a licensee wishes to surrender his or her license after receiving a notice for a hearing on possible revocation or suspension under this section, the licensee shall request, in writing, permission from the utilities and licenses committee of the common council to do so prior to the commencement of the hearing. The committee may approve the request, or deny the request and proceed with the suspension or revocation hearing.

**17. DISQUALIFICATION FOR LICENSE.**

a. Whenever any license is revoked by the common council it shall be so entered on the record by the commissioner and no other food dealer's license shall be granted to such person within 12 months of the date of its revocation nor shall any part of the money paid for any license so revoked be refunded.

b. No other food dealer's license shall be granted within 30 days from the date of license revocation by the common council to any other person to operate a food establishment on the premises operated by the licensee whose license has been so revoked.

c. When any license is surrendered in lieu of pending revocation or suspension proceedings pursuant to sub. 16, no other food dealer's license shall be granted to such person within 12 months of the date of its surrender nor shall any part of the money paid for any license that has been surrendered be refunded.

#### **68-4.3. Convenience Food Stores.**

**1. DEFINITIONS.** a. "Convenience food store" means a store that:

a-1. Is a food operation licensed under s. 68-4.

a-2. Is one of the following:

a-2-a. Has as its primary business the sale of basic food items and in addition sells household products. Basic food items may include, but are not limited to, milk and dairy

products, bread products, prepared sandwiches, frozen entrees, refrigerated food and baby food. Household products may include, but are not limited to, cleaning products, paper products, baby products and pet food.

a-2-b. A filling station that sells basic food items and in addition sells household products, as described in subpar. a.

a-3. Contains less than 5,000 square feet of retail sales space.

b. "Owner" means the person, corporation, partnership, joint venture or other group enterprise licensed to do business at that location.

**2. REGULATIONS.** All convenience food stores not exempted under sub. 3 shall:

a. Locate the cash register in a manner so that at the time of a sales transaction, the employee and customer are both visible from the sidewalk, if any, if such location can be accomplished without incurring additional cost that would not otherwise be ordinarily incurred. If there is no sidewalk, the cash register shall be located so that at the time of a sales transaction, a person directly outside the store has an unobstructed view of the employee and customer, if such location can be accomplished without incurring additional cost that would not otherwise be ordinarily incurred.

b. Keep glass entrance and exit doors clear of any signs or advertisements, with the exception of a sign which states that the cash register contains \$50 or less and that the safe is not accessible to employees.

c. Maintain one of the following on the licensed premise:

c-1. A safe that was in use at the convenience food store on August 17, 1994.

c-2. A drop-safe or time release safe that weighs at least 500 pounds or which is attached to or set into the floor in a manner approved by the police department.

d. Provide lighting for the store's parking area during all hours of darkness when employees or customers are on the premises at a minimum average of 2 foot candles per square foot, unless the store is not open for business after sunset and before sunrise.

e. Install, maintain in proper working order and operate during all hours the store is open to customers a security camera which can produce a retrieval image on film or tape.

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e-1. The camera shall be placed to provide a clear and identifiable full frame of the filmed individual's face, either entering, exiting or at the cash register. Hanging displays shall not obstruct views of the individual's face.

e-2. If a time-lapse videorecorder is operated, recorded images shall not be recorded at a slower speed than 24 hours.

e-3. Recorded tapes shall be kept for a minimum of 72 hours.

f. Have customer entrance and customer exit doors that are made of glass or other transparent material, except that a store that does not have such doors on August 17, 1994 shall not be required to install such doors until the holder of the store's food dealer license changes.

**3. EXEMPTIONS.** a. The requirements of this section do not apply to a convenience food store that conforms to either of the following descriptions:

a-1. The store is located in an enclosed shopping structure, enclosed commercial building or hospital. A convenience food store is not in an enclosed structure or building if a customer can enter it directly from the outside.

a-2. The store physically separates employees from customers with a solid partition that bars a person from entering the employee area from the customer area, has a secure lock on the employee side of any door between the employee area and the customer area, and conducts all transactions through a service window or similar arrangement.

b. At the commissioner's discretion, a convenience store may be exempted from any or all of the regulations specified in sub. 2. The owner or operator of a convenience food store that seeks an exemption under this paragraph shall submit to the commissioner a written exemption request that includes the specific reasons that the applicant believes the exemption should be granted. The commissioner may grant an exemption to a requestor if the commissioner finds that the security provisions at the location are adequate.

**4. ROBBERY PREVENTION TRAINING.** Owners and employees of convenience food stores shall be required to complete a training course in robbery prevention approved of or provided by the police department within 120 days of ownership or employment.

## 68-4.5. Construction or Alteration of Licensable Food Establishments. 1. PLAN EXAMINATION.

a. No person shall erect, construct, enlarge or alter a food establishment without first submitting to the commissioner of health department plans (drawings) which clearly show and describe the amount and character of the work proposed and without first receiving approval of submitted plans. Such plans shall include floor plan, equipment plan and specifications, wall, floor and ceiling finishes, and plans and specifications for food service kitchen ventilation. Submitted plans shall give all information necessary to show compliance with applicable health codes. Submitted plans shall be retained by the commissioner of health.

b. At the option of the commissioner of health, plans need not be submitted to execute minor alterations to a food establishment. Approved plans shall not be changed or modified unless approval of such changes or modifications shall have first been obtained from the commissioner of health.

c. Plan examination fees shall be paid as required in s. 60-25 and prior to the plan examination.

**2. SITE EVALUATION.** a. A site evaluation by the health department is required for any food establishment in a location where the immediate predecessor was not a food operation.

b. A site evaluation by the health department is not required for any food operation that has a change in operator or that is remodeled or altered. Such a food operation may voluntarily request a site evaluation by the health department and the health department shall perform a site evaluation whenever such a request is made. Any food operation that voluntarily requests a site evaluation shall pay a site evaluation fee.

c. Site evaluation fees shall be paid as required in s. 60-72.

**68-4.6. Meal Service Establishments.** Any person, association or organization who prepares food or receives food prepared or processed by others who already possess a valid food dealer's license, and makes available such food solely to the needy as a meal, shall obtain a food dealer's license. Where such operation is fewer than 4 days during a 12-month period, such licenses will not be required. The food dealer's license



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shall be issued and remain valid under the following conditions:

1. The application is fully and accurately completed and is accompanied by the fee set forth in s. 60-21-9.

2. An inspection by the department reveals sanitary facilities, equipment and food handling procedures exist.

3. An applicable valid building inspection occupancy permit exists.

4. There is compliance with all applicable food sanitation regulations.

**68-5. Food License Review Board.**

1. ESTABLISHMENT. A food license review board is herewith established to consist of 3 professional environmental health personnel, including sanitarians, appointed by the commissioner of health. Board members shall be appointed to serve 4-year terms. Elected officials and municipal employees who serve on the board shall do so without remuneration.

2. DUTIES. The food license review board shall serve as an appeal board to all petitions for the reinstatement of food dealers' licenses which have been suspended or revoked by the commissioner of health under the provisions of this chapter.

**68-6. Suspension or Revocation.**

1. INSPECTION. The commissioner of health or his duly assigned agents, after proper identification, shall be permitted to enter, at any reasonable time, any food service establishment within the city for the purpose of making inspections to determine compliance with this ordinance. He shall be permitted to conduct a reasonable exam of licensee records which may be pertinent and necessary to the carrying out of the duties assigned in this chapter and to the protection and health and welfare of employees and the public.

2. NOTICES. If upon such inspection the commissioner shall find that any licensed place is conducted or managed in violation of the provisions of this chapter or in violation of any of the ordinances or regulations of the city, or the laws of the state of Wisconsin, it shall be the duty of the commissioner of health to serve a written order upon the licensee, his agent, or employee, in charge of said licensed premises notifying him of said violations.

3. SUSPENSION OF LICENSES. Notwithstanding other provisions of this chapter, whenever the commissioner of health

finds unsanitary or other conditions in the operation of a food service establishment, which in his or her opinion constitute a substantial hazard to the public health, he or she may without warning, notice or hearing, issue a written notice to the license holder, operator or employee in charge of said licensed premise citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken; and, if deemed necessary, such order shall state that the license is immediately suspended and all food service operations are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the commissioner of health, shall be afforded a hearing before the food license review board in accordance with sub. 5. Failure to allow an inspector immediate access to the premises to determine whether such grounds exist shall be grounds for suspension.

4. REVOCATION OF LICENSES. For serious or repeated violations of any of the requirements of this chapter, or for interference with the commissioner of health in the performance of his duties, the license may be permanently revoked after an opportunity for a hearing has been provided by the food license review board. Prior to such action, the commissioner of health shall notify the license holder in writing, stating the reasons for which the license is subject to revocation, and advising that the license shall be permanently revoked at the end of 5 days following service of such notice, unless a request for a hearing is filed with the commissioner of health by the license holder within such 5 day period.

5. APPEALS TO FOOD LICENSE REVIEW BOARD. a. A person who seeks to appeal an order or other action of the department or the commissioner shall file a written appeal with the food license review board within 5 working days after the person has received written notice of the order or action being appealed. The appeal shall state with specificity the reason that the appellant believes the order or action was taken in error.

b. Upon receipt of a written appeal, the board shall within 10 days notify the appellant of the date, time and place of the hearing.

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c. The board shall serve the appellant with written notice of the hearing. The notice shall be served so that the appellant has at least 5 working days' notice of the hearing. The hearing notice shall contain:

c-1. The date, time and place of the hearing.

c-2. A statement that an opportunity will be given to the appellant to challenge the order or action, present witnesses under oath and to confront and cross-examine opposing witnesses under oath.

c-3. A statement that the appellant may be represented by an attorney of the appellant's choice at the appellant's expense, if the appellant so wishes.

d. At the hearing, the board chair shall open the meeting by stating that a notice was sent and read the notice into the record unless the appellant admits notice. The chair shall advise the appellant that the appellant has an option to proceed with a due process hearing, represented by counsel, with all testimony both direct and cross-examination under oath, or that the appellant may simply make a statement to the board.

e. A due process hearing shall be conducted in the following manner:

e-1. All witnesses will be sworn in.

e-2. The department or commissioner shall proceed first.

e-3. The appellant shall be permitted an opportunity to cross-examine.

e-4. After the conclusion of the evidence of the department or commissioner, the appellant shall be permitted to present the appellant's own witnesses, subject to cross-examination.

e-5. Board members may ask questions of witnesses.

e-6. Both the department or commissioner and the appellant shall be permitted a brief summary statement.

e-7. The board, in its discretion, may allow the filing of written briefs.

f. The recommendations of the board regarding the appellant shall be based on evidence presented at the hearing.

g. The board may affirm, reverse or modify the original order or action of the department or commissioner. The board may make a decision immediately following the hearing or at a later date. The board shall provide its decision in writing to the commissioner and the appellant.

**6. OPERATION AFTER SUSPENSION OR REVOCATION PROHIBITED.** No person, association or corporation may operate after a license suspension or revocation unless the suspension is released in writing or the revocation is not upheld by the food license review board or a court.

**68-7. Penalty.** Any person who violates or fails to comply with this chapter shall be liable upon conviction to a Class N penalty as provided in s. 61-20 in addition to any other penalty set forth herein. In addition, citations may be issued with or without prior notice as set forth in s. 50-25.

### 68-8. Food Wrappers; Premiums or Tokens.

**1. CONTAMINATION.** a. Subject to Spoilage. No person, firm or corporation shall within the city of Milwaukee give away, sell or offer for sale any food, as defined in s. 68-1 which is pronounced by the commissioner of health liable to contamination, putrefaction or other types of spoilage, by using wrappers, covers, containers, or include in the package or wrapping any token or other symbol which may be returned to any person, firm or corporation for premiums, or anything of other value.

b. Use of Token. Whenever the condition of sale provides that the token, symbol, or other item, which is to be returned for anything of value, can be mailed only to an office or other location where food as defined in s. 68-1 is not prepared, processed, stored or offered for sale, in order to receive a premium or other thing of value; and where the premium or other items of value do not include articles of primary interest to children, the use of such tokens, symbols or other items shall not be in violation of the provisions of this section.

### 3. FEDERAL REGULATIONS.

Nothing herein contained shall be construed as in any way interfering with or contrary to any federal regulation in regard to the return of any of the classes of articles specified in this section.

**68-9. Use of Common Drinking Cup. 1. PROHIBITED.** The use of the common drinking cup or receptacle for drinking water in any public place or in any public institution, hotel, theater, factory, department store, public hall or public school, or in any railroad station, in

the city, or the furnishing of such common drinking cup or receptacle for use in any such place, is hereby prohibited.

**2. PENALTY.** Any person who shall furnish, install or offer for public use such common drinking cup or receptacle for drinking water in any public place, or in any public institution, hotel, theater, factory, department store, public hall or public school, or in any railroad station in the city, shall be punishable by a fine of not less than \$5 nor more than \$25.

**68--(HISTORY) Food License Regulations****LEGISLATIVE HISTORY  
CHAPTER 68**Abbreviations:am = amended  
cr = createdra = renumbered and amended  
rc = repealed and recreatedrn = renumbered  
rp = repealed

<u>Section</u>	<u>Action</u>	<u>File</u>	<u>Passed</u>	<u>Effective</u>
68-01	cr	882269	5/16/89	6/3/89
68-01	am	910063	1/21/92	2/7/92
68-01	am	930451	7/27/93	8/13/93
68-01	am	961523	2/11/97	2/28/97
68-01	am	970623	7/25/97	8/13/97
68-01	am	980939	10/30/98	11/18/98
68-01	am	020230	6/4/2002	6/24/2002
68-01	am	020467	8/1/2002	8/20/2002
68-02	cr	910063	1/21/92	2/7/92
68-03	cr	910063	1/21/92	2/7/92
68-03	am	021507	2/11/2003	2/28/2003
68-03-2	cr	021507	2/11/2003	2/28/2003
68-04	cr	910063	1/21/92	2/7/92
68-3	rc	921114	11/20/92	12/11/92
68-4	rc	882269	5/16/89	6/3/89
68-4-1-a	am	910063	1/21/92	2/7/92
68-4-1-d	am	980963	12/18/98	1/1/99
68-4-1-e	cr	971622	2/10/98	2/27/98
68-4-1.5	cr	971622	2/10/98	2/27/98
68-4-1.5	rc	020230	6/4/2002	6/24/2002
68-4-2	rc	900753	9/25/90	10/12/90
68-4-3	rc	981367	6/2/99	7/1/99
68-4-3-b	rp	941698	7/28/95	8/16/95
68-4-3-c	m to 68-4-3-b	941698	7/28/95	8/16/95
68-4-5	rc	981367	6/2/99	7/1/99
68-4-6	rc	981367	6/2/99	7/1/99
68-4-7	rc	981367	6/2/99	7/1/99
68-4-8	rc	981367	6/2/99	7/1/99
68-4-9	rc	981367	6/2/99	7/1/99
68-4-10	cr	981367	6/2/99	7/1/99
68-4-11	cr	981367	6/2/99	7/1/99
68-4-12	cr	981367	6/2/99	7/1/99
68-4-13	cr	981367	6/2/99	7/1/99
68-4-14	cr	981367	6/2/99	7/1/99
68-4-15	cr	981367	6/2/99	7/1/99
68-4-15-a	rc	030306	6/24/2003	7/11/2003
68-4-15-b-1	rc	030306	6/24/2003	7/11/2003
68-4-15-b-2	am	030306	6/24/2003	7/11/2003
68-4-16	cr	981367	6/2/99	7/1/99
68-4-17	cr	981367	6/2/99	7/1/99
68-4.3	cr	901590	4/23/91	7/15/91
68-4.3	rc	931591	3/29/94	4/16/94
68-4.3-1-a-2	rc	940405	7/29/94	8/17/94
68-4.3-2-0	am	940405	7/29/94	8/17/94
68-4.3-2-a	am	940405	7/29/94	8/17/94
68-4.3-2-c	rc	940405	7/29/94	8/17/94
68-4.3-2-e	am	940405	7/29/94	8/17/94

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68-4.3-2-e	rc	971141	1/20/98	2/6/98
68-4.3-2-f	cr	940405	7/29/94	8/17/94
68-4.3-3	rc	940405	7/29/94	8/17/94
68-4.3-4	rp	911808	1/30/92	2/1/92
68-4.5	cr	85-409	6/28/85	7/19/85
68-4.5	am	881803	1/24/89	2/11/89
68-4.5	rc	910063	1/21/92	2/7/92
68-4.5	am	941698	7/28/95	8/16/95
68-4.6	cr	86-544	7/29/86	8/16/86
68-4.6-0	am	910063	1/21/92	2/7/92
68-4.6-0	rc	031381	3/2/2004	3/19/2004
68-4.6-1	am	881803	1/24/89	2/11/89
68-4.6-1	am	030504	11/14/2003	1/1/2004
68-5-2	am	901415	12/21/90	1/12/91
68-6-3	am	020230	6/4/2002	6/24/2002
68-6-5	rc	020230	6/4/2002	6/24/2002
68-6-6	cr	882269	5/16/89	6/3/89
68-7	rc	882269	5/16/89	6/3/89
68-7	am	020593	11/8/2002	1/1/2003
68-8-2	rp	882269	5/16/89	6/3/89
68-9	m from 67-18	021563	3/25/2003	4/11/2003

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